

[AS REPORTED FROM THE COMMITTEE ON THE BILL]

House of Representatives, 13 August 1970.

Words struck out by the Committee are shown in italics within bold round brackets; words inserted are shown in roman underlined with a double rule, or with double rule before first line and after last line.

Hon. Mr Pickering

AUSTRALIA AND NEW ZEALAND BANKING GROUP

[PRIVATE]

ANALYSIS

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A BILL INTITULED

An Act to supplement the Australia and New Zealand Banking Group Act 1970 of the Parliament of the United Kingdom by making the transfer of the undertaking of
5 Australia and New Zealand Bank Limited to Australia and New Zealand Banking Group Limited fully effective in New Zealand

WHEREAS Australia and New Zealand Bank Limited (hereinafter referred to as the existing bank), Australia and New
10 Zealand Banking Group Limited (hereinafter referred to as the Bank), and The English, Scottish and Australian Bank, Limited are incorporated in England and are companies within the meaning of the Companies Acts 1948 to 1967 of the Parliament of the United Kingdom: And whereas the
15 existing bank carries on the business of banking in New

No. 35—2

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Zealand and elsewhere: And whereas by a scheme of arrangement sanctioned under section 206 of the Companies Act 1948 of the Parliament of the United Kingdom and which took effect on the 23rd day of June 1969, the existing bank and The English, Scottish and Australian Bank, Limited 5 became wholly-owned subsidiaries of the Bank: And whereas the said scheme of arrangement was proposed with a view to the merger of the undertakings of the existing bank and The English, Scottish and Australian Bank, Limited: And whereas by the Australia and New Zealand Banking Group 10 Act 1970 of the Parliament of the United Kingdom provision is made (*inter alia*) for the transfer to and vesting in the Bank of the undertakings of the existing bank and The English, Scottish and Australian Bank, Limited so that such transfer and vesting may be effected economically and without 15 interference with the conduct and continuity of the business of banking: And whereas portions of those undertakings cannot be vested in the Bank by virtue of the said Act of the Parliament of the United Kingdom because transfers of those portions are governed otherwise than by a law of a part of 20 the United Kingdom: And whereas legislation is the only means by which the transfer to the Bank of the portion of the undertaking of the existing bank which is governed by the laws of New Zealand can be effected economically and without interference with the conduct and continuity of the 25 business of banking: And whereas the said Act of the Parliament of the United Kingdom contains (*inter alia*) the provisions set forth in the Schedule to this Act:

BE IT THEREFORE ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the 30 same, as follows:

1. Short Title and commencement—(1) This Act may be cited as the Australia and New Zealand Banking Group Act 1970.

(2) This Act shall come into force on a date to be 35 appointed for the commencement thereof by the Governor-General by Order in Council.

2. Enactments—(1) In this Act “enactment” means an enactment in—

- (a) This Act; or
- 5 (b) Any other Act of the General Assembly; or
- (c) Any Act of the Parliament of England, of the Parliament of Great Britain, or of the Parliament of the United Kingdom, which is in force in New Zealand; or
- 10 (d) Any regulations, rules, Order in Council, bylaw, notice, or instrument, made under the authority of any such Act and in force in New Zealand; or
- (e) Any Proclamation.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, 15 extended, or amended by or by virtue of any subsequent enactment including any enactment in this Act.

3. Interpretation—(1) In this Act, and in the provisions of the Scheduled Act which by virtue of subsection (1) of section 5 of this Act have effect as part of the law of New 20 Zealand, unless the context otherwise requires,—

“The appointed day” means the day appointed for the commencement of this Act:

“The Bank” means Australia and New Zealand Banking Group Limited:

25 “The existing bank” means Australia and New Zealand Bank Limited:

“Excluded assets” means any land situated in New Zealand which is vested in, belongs to, is held by, or is registered in the name of the existing bank otherwise than in the capacity of trustee or by way of security:

30 and “excluded asset” shall be construed accordingly: “Instrument by way of security” shall have the meaning assigned to it in section 2 of the Chattels Transfer Act 1924:

35 “Land” shall have the meaning assigned to it in section 2 of the Land Transfer Act 1952:

40 “Scheduled Act” means the Australia and New Zealand Banking Group Act 1970 of the Parliament of the United Kingdom:

“Security” means a mortgage or submortgage (whether legal or equitable), charge, debenture, instrument by way of security, bill of exchange, promissory note, guarantee, lien, pledge, or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual or contingent. 5

(2) In this Act, unless the context otherwise requires, any term which is not defined in subsection (1) of this section but which is defined in section 4 of the Scheduled Act shall have the meaning attributed to that term by that section. 10

4. Act to bind the Crown and other persons—This Act shall bind the Crown and every person (including any body politic or corporate) whose rights are affected by any provision of this Act. 15

5. Provisions of Scheduled Act adopted—(1) On and after the appointed day the provisions of subsection (1) of section 6, subsection (1) of section 7, and section 8 (except paragraph (b) of that section) (*and section 9*) of the Scheduled Act interpreted, subject to section 3 of this Act, in the manner required by section 4 of the Scheduled Act shall have effect as part of the law of New Zealand. 20

(2) Without either extending or restricting the operation of subsection (1) of this section it is hereby declared that—

(a) Any security made, given, or executed in the name or in favour of, and held by, the existing bank as security for the payment of debts or the discharge of obligations or liabilities (whether present or future, actual or contingent) of any person shall (*as from*) on and after the appointed day be deemed to have been transferred to the Bank by virtue of this Act and shall be held by and be available to the Bank as security for the payment of the debts or the discharge of the obligations or liabilities in respect of which the security was held by the existing bank immediately before that day including future advances to the said person by, and future debts, obligations or liabilities of the said person to, the Bank to the same extent to which future advances by, or future debts, obligations or liabilities to, the existing bank were secured thereby immediately before the appointed day; and 30 35 40

- (b) That subsection shall not operate to terminate any contract of employment to which that subsection applies for the purpose of any enactment or other rule of law that may be relevant.

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New

5A. Actions, etc., by or against existing bank not to abate—

(1) This section shall apply to—

10 (a) Any action, arbitration, or proceeding or cause of action, arbitration, or proceeding which immediately before the appointed day is pending or existing by, against, or in favour of the existing bank:

15 (b) Any cause of action, arbitration, or proceeding by, against, or in favour of the existing bank arising on or after the appointed day but arising in respect of a contract made by the existing bank before the appointed day or arising in respect of anything done or omitted to be done by the existing bank before the appointed day:

20 but shall not apply to any action, arbitration, or proceeding or to any cause of action, arbitration, or proceeding relating to an excluded asset.

25 (2) Any action, arbitration, or proceeding and any cause of action, arbitration, or proceeding to which this section applies shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may be prosecuted and, without amendment of any writ, pleading, or other document, continued and enforced by, against, or in favour of the Bank in its own name as and when it might have been prosecuted, continued, and enforced by, against, or in favour of the existing bank if this Act had not been passed:

30 Provided that the Court or other person making or entering any judgment, order, or award for the payment of any sum of money, whether ascertained or to be ascertained, against the Bank in any such action, arbitration, or proceeding shall, at the request of any party in whose favour such judgment, order, or award is being made or entered, make or enter the same against both the existing bank and the Bank, and the same may, when so made or entered, be enforced against both
40 the existing bank and the Bank.

New

5B. Actions, etc., relating to excluded assets of existing bank—Any party to any action, arbitration, or proceeding relating to an excluded asset shall be entitled at any stage thereof to amend any writ, pleading, or other document filed by him in such action, arbitration, or proceeding by substituting therein for the name of the Bank the name of the existing bank as party, and no order shall be made against any party so amending to pay to the Bank or to the existing bank any costs occasioned by such amendment, and the action, arbitration, or proceeding shall be continued as if the existing bank had originally been made a party thereto.

6. Books and documents to remain evidence—(1) Any book or other document which if this Act had not been passed would have been evidence in respect of any matter for or against the existing bank shall, on and after the appointed day, be admitted in evidence in respect of the same matter for or against the Bank.

(2) In this section “document” has the same meaning as in subsection (5) of section 25A of the Evidence Act 1908.

New

6A. Service of documents—Service of a document (as defined in subsection (1) of section 2 of the Companies Act 1955)—

(a) On the Bank shall be deemed to be service on the existing bank; or

(b) On the existing bank shall be deemed to be service on the Bank.

7. Application of the Banking Act 1908—Notwithstanding the transfer of the undertaking of the existing bank to the Bank under and in the terms of this Act, the provisions of the Banking Act 1908 shall continue to apply with respect to the books of the existing bank which are transferred to the Bank by virtue of this Act and to entries made in such books before the appointed day.

8. Consequential amendments—(1) The First Schedule to the Reserve Bank of New Zealand Act 1964 and the First Schedule to the Private Savings Banks Act 1964 are hereby amended by omitting the words “Australia and New Zealand Bank Limited”, and substituting in each case the words “Australia and New Zealand Banking Group Limited”.

(2) Subject to the provisions of this section, all references to the existing bank in any enactment (other than an enactment in any Act mentioned in subsection (1) of this section) that is in force immediately before the appointed day or in
5 any security or other document or any entry or record made on any register in relation to any security or other document which security or other document is subsisting immediately before the appointed day (*shall, on and after the appointed day,*) or in any notices or other communications served, given,
10 or sent on or after the appointed day in relation to any such security or other document shall, unless the context otherwise requires, be read as references to the Bank:

Provided that this subsection shall not apply to any reference to the existing bank in any enactment, document,
15 entry, or record in relation to an excluded asset.

(3) Notwithstanding anything in subsection (2) of this section, where in pursuance thereof a reference to the existing bank in any document constituting or relating to any pension scheme, provident fund, or officers' guarantee fund
20 of the existing bank in force immediately before the appointed day is to be read, construed, and have effect as a reference to the Bank, for the purpose of ascertaining and calculating the right to benefits thereunder, service or employment with the existing bank before the appointed day shall be taken
25 into account as if it were service or employment with the Bank, but the coming into force of this section shall not of itself give rise to any claim to benefit under any such scheme or fund or operate to cause a person to become a member of another pension scheme, provident fund, or officers' guarantee
30 fund.

(4) Without prejudice to the generality of subsection (2) of this section, where by any order of the court or by any trust deed, settlement, covenant, or agreement, whether made or executed before, on, or after the appointed day, the exist-
35 ing bank (whether alone or with any other person) was appointed trustee or in any other fiduciary capacity, such order, trust deed, settlement, covenant, or agreement shall not fail by reason of anything in this Act but shall (*as from the appointed day*) be read and construed and have effect as
40 if for any reference therein to the existing bank there was substituted a reference to the Bank.

(5) Nothing in this Act shall exempt the Bank from the provisions of any enactment relating to banks or banking.

9. Entry of Bank not to constitute assignment, etc., of land—For the avoidance of doubt it is hereby declared—

- (a) That the entry of the Bank upon, or the use enjoyment or occupation by the Bank of, any land on or after the appointed day as tenant, subtenant, or licensee of or under the existing bank shall not constitute an assignment, transfer, devolution, parting with possession, or other disposition of that land for the purpose of any provision relating to assignment, transfer, devolution, parting with possession, or other disposition contained in any instrument in existence on the appointed day and relating to that land: 5
- (b) That no transfer or vesting effected by virtue of this Act shall invalidate or discharge any contract or security. 10 15

New

9A. Protection of persons in respect of dealings with excluded assets—No person dealing with the Bank or the existing bank (in any capacity whatsoever) shall, in respect of any dealing or transaction entered into or purporting to be entered into by the Bank or the existing bank— 20

- (a) Be concerned to see or inquire into whether any land the subject of the dealing or transaction is an excluded asset; or 25
- (b) Be affected by any notice, express, implied or constructive, that any such land is an excluded asset.

10. Savings—(1) No Registrar of Deeds or District Land Registrar or any other person charged with the keeping of any books or registers shall be obliged solely by reason of the provisions of sections 5 and 8 of this Act to change the name of the existing bank to that of the Bank in his books or registers or in any document in his charge; but the presentation to any such Registrar or other person of any instrument— 30

- (a) Executed or purporting to be executed by the Bank; and 35
- (b) Relating to any property (other than an excluded asset) held immediately before the appointed day by the existing bank; and

- (c) Containing a recital that that property has become vested in the Bank by virtue of the provisions of this Act—
shall, in the absence of proof to the contrary, be sufficient
5 evidence that the property is vested in the Bank.
(2) Except as provided in subsection (1) of this section, nothing in this Act shall derogate from the provisions of the Land Transfer Act 1952.

11. **Private Act**—This Act is hereby declared to be a Private
10 Act.

SCHEDULE

PROVISIONS OF THE AUSTRALIA AND NEW ZEALAND BANKING GROUP ACT
1970 OF THE PARLIAMENT OF THE UNITED KINGDOM

PART I

PRELIMINARY

1. **Short Title**—This Act may be cited as the Australia and New Zealand Banking Group Act 1970.

2. **Division of Act into Parts**—This Act shall be divided into Parts as follows—

Part I—Preliminary.

Part II—Transfer of undertakings of Australia and New Zealand Bank Limited and The English, Scottish and Australian Bank, Limited.

Part III—Incorporation of Australia and New Zealand Savings Bank Limited in the State of Victoria in the Commonwealth of Australia.

Part IV—General.

3. **Enactments**—(1) In this Act “enactment” means an enactment in this Act or in any general or local Act or in any order, rule, or regulation made under any Act.

(2) Any reference in this Act to any enactment shall be construed as a reference to that enactment as applied, extended or amended by or by virtue of any subsequent enactment including any enactment in this Act.

4. **Interpretation**—In this Act, unless the subject or context otherwise requires,—

“The appointed day” means such day as may be appointed under section 5 (Appointed day) of this Act;

“The Bank” means Australia and New Zealand Banking Group Limited;

SCHEDULE—*continued*

“Excluded assets” means—

(a) Any document required to be kept by an existing bank pursuant to the provisions of the Companies Acts 1948 to 1967;

(b) Shares in Esanda Limited;

(c) Shares in A.N.Z. Investments Limited;

(d) Any loan by an existing bank to A.N.Z. Investments Limited;

(e) Shares in E.S. & A. Savings Bank Limited;

(f) Shares in Britannia - Investment Company Pty. Limited; and

(g) Any land situate outside the United Kingdom which is vested in, belongs to, or is held by an existing bank otherwise than in the capacity of trustee or by way of security;

and “excluded asset” shall be construed accordingly;

“The existing banks” means Australia and New Zealand Bank Limited and The English, Scottish and Australian Bank, Limited and “existing bank” shall be construed accordingly;

“In the capacity of trustee” means (whether alone or jointly with any other person)—

(a) As trustee or custodian trustee of any trust deed, settlement, covenant, agreement, or will and whether originally so appointed or not, and whether appointed under hand or seal or by order of any court or otherwise howsoever;

(b) As executor of the will of a deceased person;

(c) As administrator of the estate of a deceased person;

(d) As judicial trustee appointed by order of any court; or

(e) In any other fiduciary capacity whatsoever;

“The indebtedness of an existing bank to the Bank” means and includes all debts whatsoever which shall be owing by that existing bank to the Bank immediately before the appointed day;

“Land” includes any estate, interest, or right in, over, or under land;

“Liabilities” means duties and obligations of every description but does not include any duty or obligation of an existing bank relating to an excluded asset;

“Property” means property and assets of every description whatsoever situate of an existing bank, and includes securities, rights, and powers of every description, except any right or power of an existing bank relating to an excluded asset;

“Security” means a mortgage (whether legal or equitable), charge, debenture, bill of exchange, promissory note, guarantee, lien, pledge, or other means of securing the payment of a debt, whether present or future, or the discharge of an obligation or liability, whether actual or contingent;

“The undertaking of an existing bank” means the business and all of the property, except any excluded asset, vested in or belonging to or held by that existing bank immediately before the appointed day and all of the liabilities, except the indebtedness of that existing bank to the Bank, to which that existing bank shall be subject immediately before that day; and

“Will” includes a codicil and any other testamentary writing.

SCHEDULE—*continued*

PART II

TRANSFER OF UNDERTAKINGS OF AUSTRALIA AND NEW ZEALAND BANK LIMITED AND THE ENGLISH, SCOTTISH AND AUSTRALIAN BANK, LIMITED

5. Appointed day—(1) The Board of Trade may by order appoint a day for the purposes of this Part of this Act.

(2) The power conferred by the last subsection shall be exercisable by statutory instrument.

6. Transfer of undertakings—(1) On the appointed day the undertakings of the existing banks shall by virtue of this Act be transferred to and vest in the Bank and the indebtedness of the existing banks to the Bank shall by virtue of this Act be wholly cancelled and extinguished.

(2) The production of a copy of this Act printed by the Queen's Printer shall on and after the appointed day be conclusive evidence in all courts and proceedings of the transfer of the undertakings of the existing banks to the Bank and of their vesting in the Bank; and without prejudice to the generality of the foregoing, any such copy of this Act shall, in relation to all registered securities within the meaning of the Stock Transfer Act 1963 which are transferred and vested by virtue of this Act, operate for all the purposes of the said Act of 1963 as a duly executed stock transfer in respect of the transfer and vesting of such securities.

1963 c. 18

(3) If any portion of the undertaking of an existing bank cannot be vested in the Bank by virtue of this Act because transfers of that portion are governed otherwise than by the law of a part of the United Kingdom, then that existing bank shall so soon as is practicable after the appointed day take all necessary steps for the purpose of securing that the portion is effectively transferred to the Bank.

(4) For the avoidance of doubt it is hereby declared that the transfer of an interest in land under and by virtue of this Act shall not—

(a) Constitute a purchase or creation of that interest for the purposes of section 30 (2) of the Landlord and Tenant Act 1954 (which restricts a landlord's right to oppose an application for a new tenancy of business premises in certain cases); or

(b) Constitute an assignment, transfer, devolution, parting with possession, or other disposition of that interest for the purposes of any provision relating to assignment, transfer, devolution, parting with possession, or other disposition contained in any instrument concerning that interest; or

(c) Invalidate or discharge any contract or security; or

(d) Operate so as to merge any leasehold interest in the reversion which is expectant thereon.

1954 c. 56

7. Saving of contracts, etc.—(1) Subject to the provisions of this section, all contracts, agreements, conveyances, deeds, leases, licences, and other instruments or undertakings entered into by or made with or addressed to an existing bank (whether alone or with any other person)

SCHEDULE—*continued*

before and in force on the appointed day shall on and after that day to the extent that they were previously binding upon and enforceable against the existing bank, be binding and of full force and effect in every respect against or in favour of the Bank as fully and effectually as if, instead of an existing bank, the Bank had been a party thereto or bound thereby or entitled to the benefit thereof:

Provided that the provisions of this subsection shall not apply to the indebtedness of an existing bank to the Bank (or to any part of such indebtedness), or to any contract, agreement, conveyance, deed, lease, licence, instrument, or undertaking relating to an excluded asset:

And provided further that no director, secretary, or auditor of an existing bank shall by virtue only of this Act become a director, secretary, or auditor (as the case may be) of the Bank.

(2) In relation to every contract of employment to which subsection (1) of this section applies, the provisions of the said subsection shall operate to substitute the Bank for the existing bank which was the employer thereunder immediately before the appointed day but not to constitute a termination of such contract for the purposes of the Redundancy Payments Act 1965.

1965 c. 62

8. Banking business—Without prejudice to the generality of the foregoing provisions of this Act, the following provisions shall have effect with relation to the banking businesses of the existing banks—

- (a) The relationship between an existing bank and a customer at any office or branch of that existing bank shall on and after the appointed day be between the Bank and such customer and shall give rise to the same rights and the same duties (including rights of set-off) as would have existed before that day if such relationship had been between the Bank and the customer, and so that any instruction, order, direction, mandate, or authority given by such customer to the existing bank and subsisting at or given after the appointed day shall, unless and until revoked or cancelled, be deemed to have been given to the Bank;
- (b) Any security held by an existing bank as security for the payment of debts or liabilities (whether present or future, actual or contingent) of any person shall be transferred or deemed to be transferred to the Bank on the appointed day and shall be held by and be available to the Bank as security for the payment of such debts and liabilities to the Bank; and where the security extends to future advances or to future liabilities of such person, the said security shall as on and after that day be held by and be available to the Bank as security for future advances to the said person by, and future liabilities of the said person to, the Bank to the same extent to which future advances by, or liabilities to, the existing bank were secured thereby immediately before that day;
- (c) The Bank shall, in relation to any security transferred or deemed to have been transferred to it in accordance with or by virtue of the provisions of this Act and the moneys thereby secured, be entitled to the same rights and priorities and subject to the

SCHEDULE—continued

same obligations and incidents as the existing bank from which the same has been transferred or deemed to have been transferred would have been entitled and subject to if the same had continued to be held by the said existing bank;

- (d) The custody of any document, goods, or thing held by an existing bank as bailee for any other person at any office or branch of such existing bank shall be transferred or deemed to be transferred to the Bank on the appointed day and the rights and obligations of such existing bank under any contract of bailment relating to such document, goods or thing shall be transferred or deemed to be transferred on that day to the Bank;
- (e) Any negotiable instrument or order for payment of money, whether drawn, given, accepted, or endorsed before, on, or after the appointed day, which is expressed to be drawn on, or given to, or accepted or endorsed by, an existing bank, or payable at any place of business of an existing bank shall have the same effect on and after the appointed day as if it had been drawn on, or given to, or accepted or endorsed by, the Bank, or payable at the same place of business of the Bank.

9. Actions, etc., not to abate—Any action, arbitration, or proceeding and any cause of action, arbitration, or proceeding which shall on the appointed day be pending or existing by, against, or in favour of an existing bank shall not abate or be discontinued or be in any way prejudicially affected by reason of the provisions of this Act, but the same may be prosecuted, continued, and enforced by, against, or in favour of the Bank as and when it might have been prosecuted, continued, and enforced by, against, or in favour of an existing bank if this Act had not been passed:

Provided that this section shall not apply to any action, arbitration, or proceeding or to any cause of action, arbitration, or proceeding relating to an excluded asset.

10. Documents, etc., to remain evidence—(1) Any book or other document which if this Act had not been passed would have been evidence in respect of any matter for or against an existing bank shall, on and after the appointed day, be admitted in evidence in respect of the same matter for or against the Bank.

(2) In this section “document” has the same meaning as in section 10 of the Civil Evidence Act 1968.

1968 c. 64

11. Application of Bankers’ Books Evidence Act 1879—(1) Notwithstanding the transfer of the undertakings of the existing banks to the Bank under and in the terms of this Act, the provisions of the Bankers’ Books Evidence Act 1879 shall continue to apply with respect to the books of the existing banks which are transferred to the Bank by virtue of this Act and to entries made in such books before the appointed day.

1879 c. 11

(2) For the purposes of this section, “books” include ledgers, day books, cash books, account books and all other books and records used in the ordinary business of an existing bank before the appointed day.

SCHEDULE—*continued*

12. Application of enactments and documents—(1) Subject to the provisions of this section, where—

(a) Any enactment other than an enactment in this Act; or

(b) Any document whensoever made or executed;

contains any reference express or implied to an existing bank such reference shall, on and after the appointed day and except where the context otherwise requires, be read, construed, and have effect as a reference to the Bank:

Provided that this subsection shall not apply to any reference to an existing bank in relation to an excluded asset in an enactment or document.

(2) Notwithstanding anything in the preceding subsection where in pursuance thereof a reference to an existing bank in any document constituting or relating to any pension scheme, provident fund, or officers' guarantee fund of that existing bank in force immediately before the appointed day is to be read, construed, and have effect as a reference to the Bank, for the purpose of ascertaining and calculating the right to benefit thereunder, service or employment with that existing bank prior to the appointed day shall be taken into account as if it were service or employment with the Bank, but the coming into force of this section shall not of itself give rise to any claim to benefit under any such scheme or fund or operate to cause a person to become a member of another pension scheme, provident fund, or officers' guarantee fund.

(3) Without prejudice to the generality of subsection (1) of this section, where by any order of the court or by any trust deed, settlement, covenant, or agreement or where by any will, whether made or executed before, on, or after the appointed day, an existing bank (whether alone or with any other person) was or is granted letters of administration or appointed trustee, executor, guardian, or in any other fiduciary capacity, such order, trust deed, settlement, covenant, agreement, or will shall not fail by reason of any thing in this Act but shall as from the appointed day be read and construed and have effect as if for any reference therein to that existing bank there was substituted a reference to the Bank.

(4) Nothing in this Act shall exempt the Bank from the provisions of any enactment relating to companies carrying on the business of banking.